

REGULATING SARS IN CHINA: LAW AS AN ANTIDOTE?

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I. INTRODUCTION

Severe Acute Respiratory Syndrome (SARS), a severe respiratory illness, is caused by a previously unknown coronavirus (SARS-Cov).¹ As of this writing, the disease has no vaccine and no cure.² In general, the disease starts with a high fever, accompanied by headaches, body aches, and mild respiratory symptoms. Most patients develop pneumonia, and some cases require mechanical ventilation. SARS spreads through respiratory droplets produced by an infected person when he or she coughs or sneezes or through physical contact. Thus, a person is vulnerable to the disease when engaging in a close person-to-person contact, such as kissing or embracing, and sharing eating or drinking utensils. Talking with a SARS patient within three feet can also be dangerous.³ According to Dr. Heymann, of the World Health Organization (WHO), “SARS is the first severe and easily transmissible new disease to emerge in the 21st century.”⁴

The disease was first identified in a southern province of China on November 16, 2002.⁵ It quickly spread to twenty-seven countries.⁶ In March of 2003, the WHO declared SARS a global health threat.⁷ During the 2003 outbreak, 8,096 people worldwide were infected with SARS, 774

1. Ctr. Disease Control & Prevention, U.S. Dep’t Health & Human Serv. (CDC), *Frequently Asked Questions About SARS*, at <http://www.cdc.gov/ncidod/sars/faq.htm> (last visited Sept. 1, 2004).

2. *Id.*

3. *Id.*

4. *SARS: Assessment, Outlook, and Lessons Learned: Hearing Before the House Comm. on Energy and Commerce, Subcom. on Oversight and Investigations*, 108th Cong. 8 (2003) (statement of David L. Heymann, Exec. Director for Communicable Diseases, World Health Organization).

5. WHO, *Summary Table of SARS Cases by Country*, at http://www.who.int/csr/sars/country/en/country2003_08_15.pdf (last visited Nov. 13, 2004).

6. WHO, *Summary of Probable SARS Cases*, at http://www.who.int/csr/sars/country/table2003_09_23/en (last visited Nov. 13, 2004).

7. WHO, *World Health Organization Issues Emergency Travel Advisory* (Mar. 15, 2003), at http://www.who.int/csr/sars/archive/2003_03_15/en (last visited Nov. 13, 2004).

of whom fell victim to the disease.⁸ In China, the economic and social costs of the outbreak were enormous. 5,327 people were infected with SARS in China by June of 2003. 329 died as a result of these infections.⁹ The direct economic loss of the outbreak over three months was approximately \$18 billion.¹⁰ In addition, the public lost an inordinate amount of confidence in the Chinese health care system.

Quarantine and isolation are the most effective means to control SARS.¹¹ Cutting infection rates required the governments in affected regions to react quickly to initial cases, take action to restrict infection in the region, and publicly announce the outbreak to neighboring regions and the international community.¹²

In the 2003 outbreak, the global effort to combat the SARS epidemic hinged on how effectively China dealt with the crisis. After investigating the SARS situation in Guangdong, the WHO expert team concluded that there would be no chance of controlling the epidemic in other countries unless it was first contained in China.¹³ Unfortunately, initial information about the outbreak in China was concealed for fear of damaging local image and trade. As a result, the epidemic quickly gained momentum and erupted into a national health threat. After the SARS epidemic devastated Beijing in April of 2003, the Chinese government began a transparent approach and openly launched a national campaign against SARS. Newly enacted SARS laws and regulations played a crucial role in establishing the SARS reporting system, allocating medical resources, and administering massive quarantine and isolation. The epidemic was brought under control in June of 2003.

This Article examines the legal aspects of the Chinese government's reaction to the SARS epidemic between November 2002 and June of 2003. It begins by tracing the development of the SARS epidemic and

8. WHO, *Summary of Probable SARS Cases with Onset of Illness from 1 Nov. 2002 to 31 Jul. 2003* (Dec. 31, 2003), at http://www.who.int/csr/sars/country/table2004_04_21/en (last visited Nov. 13, 2004).

9. *Id.*

10. Sun Yuting, *Zhongguo neidi jingji yin feidian sunshi 179 yi meiyuan [SARS Caused \$17.9 Billion in Damages in Mainland China]*, ZHONGGUO QINGIAN BAO [CHINA YOUTH DAILY], Nov. 11, 2003, available at <http://news.sina.com.cn/c/2003-11-11/06122109319.shtml> (last visited Sept. 6, 2004).

11. CDC, *Public Health Guidance for Community-Level Preparedness and Response to Severe Acute Respiratory Syndrome (SARS)* (Jan. 8, 2004), at <http://www.cdc.gov/ncidod/sars/guidance/D/isolation.htm> (last visited Nov. 13, 2004).

12. See generally WHO, *SARS: Lessons from a New Disease*, at <http://www.who.int/whr/2003/chapter5/en/print.html> (last visited Nov. 13, 2004) (describing the spread of SARS, reactions to this spread and lessons learned as a result).

13. *Assessment, Outlook, and Lessons Learned*, *supra* note 4, at 13.

examining the different reactions of the Chinese Government to the outbreak before and after April 20, 2003. The Article further provides an in-depth analysis of the new SARS laws and problems the government encountered while enforcing them. While the Article contrasts the new laws to the 1989 law on infectious diseases, it also discusses the striking resemblances between the two. This Article concludes by arguing that changing China's traditional indifference toward existing laws would be far more effective in preventing epidemics than its current approach of enacting new laws for the same purpose.

II. THE DEVELOPMENT OF THE SARS EPIDEMIC BEFORE APRIL 20, 2003

A. *Starting from Guangdong*¹⁴

According to the World Health Organization (WHO), the first SARS case was identified on November 16, 2002, in Guangdong Province, China.¹⁵ The patient was treated in a local hospital where several medical workers were infected with the same disease. It is unclear which hospital admitted the patient, when he was released, or how many people had been in close contact with the patient.¹⁶

Two months later, in response to an increase in the number of reported SARS cases, the Health Department of Guangdong sent a task force on January 21, 2003 to three local hospitals that admitted SARS patients.¹⁷ The taskforce produced an internal report that confirmed the outbreak of SARS and detailed the symptoms of the disease. The report also provided several rules on how hospitals should handle SARS cases. Unfortunately, the internal report was not released to the public until February 11, 2003.¹⁸

14. The following two Parts were adopted with permission from CHENGLIN LIU, CHINESE LAW ON SARS Ch. 1 (2004). Guangdong is a southern province of China. Guangzhou is the provincial capital of Guangdong. Guangdong is also pronounced "Canton," as in "Cantonese."

15. The WHO cited November 16, 2002 as the date of the onset of the first identified case in Guangdong. See WHO, *Summary Table of Areas that Experienced Local Transmission of SARS During the Outbreak Period from 1 Nov. 2002 to 31 July 2003* (Nov. 21, 2003), at http://www.who.int/csr/sars/areas/areas2003_11_21/en/ (last visited Sept. 6, 2004). Subsequently, major news resources reporting on SARS, such as *China Daily*, *People's Daily*, *Asian Times*, and *Washington Post*, have cited November 16, 2003 as the date when SARS was identified.

16. Audra Ang, *Early SARS Patient as Mysterious as Disease*, MONTEREY HERALD, Apr. 12, 2003, <http://www.montereyherald.com/mld/mcherald/2003/04/13/news/world/5619257.htm> (last visited Sept. 6, 2004).

17. CHENGLIN LIU, *supra* note 14, at 2.

18. *Id.* GUANDONG SHENG WEISHENG TING FU ZHONGSHAN SHI HUIZHEN DIAOCHA ZHUANJIA ZU [SPECIALIST INVESTIGATIVE CONSULTING GROUP SENT BY GUANDONG PROVINCE HEALTH DEPARTMENT], SHENG ZHUANJIA ZU GUANYU ZHONGSHAN SHI BU MING YUANYIN FEIYAN DIAOCHA BAOGAO [THE INVESTIGATION REPORT FOR THE UNKNOWN LUNG DISEASE IN ZHONGSHAN CITY],

Among the many SARS cases, the most notable was that of Mr. Zhou, the “super spreader.”¹⁹ During his treatment at Zhongshan No. 2 hospital, Mr. Zhou infected more than thirty people, including attending doctors, nurses, and other health care personnel.²⁰ Both the Deputy Chief Director of the hospital and the ambulance driver who transferred Mr. Zhou to the infectious disease hospital died of SARS.²¹ Mr. Zhou’s case was well recorded by the local news, but was withheld from the public for several weeks before being published.²²

While local hospitals were overwhelmed by the highly contagious disease, the public was kept in the dark. No public announcements or news releases detailed the outbreak. Speculation soon began to circulate among the uninformed public that a strange, incurable disease had rapidly developed in Guangzhou.²³ The public, lacking official guidance, panicked in reaction to the outbreak. Local residents rushed to purchase Ban Lan Gen (BLG, a Chinese herb medicine), antibiotics, white vinegar, and even iodized salt, all of which were rumored to be effective against SARS.²⁴ Cunning merchants took advantage of the opportunity and used the false information to exploit the crisis.²⁵

Under mounting public pressure, the government, on February 11, 2003, finally acknowledged that there had been 305 SARS cases and five deaths in Guangdong.²⁶ It authorized a local newspaper to release the information to the public.²⁷ Nearly three months transpired between the

Feb. 11, 2003, at <http://club.emkt.com.cn/showflat.php?Cat=&Board=ad&Number=167158&page=15&view=expanded&sb=1&o=0&fpart=1&vc=1> and <http://club.emkt.com.cn/showflat.php?Cat=&Board=ad&Number=167399&page=15&view=expanded&sb=1&o=0> (last visited Sept. 6, 2004).

19. *Feidian chaoji chuanbozhe jujue caifang duo fang renyuan beigan yihan* [“Super Spreader” Canceled News Interview], DAHUA WANG [DAHUA NET], <http://www.dahuawang.com/ztzw/feiyang/6279.htm> (last visited Sept. 2, 2004). Mr. Zhou infected as many as 130 people with SARS. *Id.*

20. Liao Huailing, *Bai ming bai yi tian shi mao si jiu yi ren* [Hundreds of White Angels Risking Lives to Save One], YANG CHENG WEN BO [GUANGZHOU EVENING NEWS], Feb. 15, 2003, http://www.gd.xinhua.org/ztd/2003-02/14/content_224152.htm (last visited Nov. 19, 2004).

21. Wu Zigang, *Renming wei Jiankang er zhan* [People Fought for Health], XINHUA NEWS, Aug. 1, 2003, <http://www.people.com.cn/GB/shehui/1062/1996041.html> (last visited Sept. 6, 2004). The article provides a timeline of the outbreak in Guangdong and confirms that the health officials from Heyuan, where the first cluster of cases was identified, filed a report with the provincial government on Jan. 2, 2003.

22. Liao, *supra* note 20.

23. CHENGLIN LIU, *supra* note 14, at 7.

24. QianLong, *Fansi liangda shijian: Chuanmei he gongzhong ying ruhe goutong?* [Revisit Two Big Incidents: How did the Media Communicate with the Public?], QIANLONG.COM, Mar. 5, 2003, http://medianet.21dnn.com/7631/2003-3-5/33@712793_3.htm (last visited Sept. 6, 2004) [hereinafter QianLong, *Revisit*].

25. *Id.*

26. CHENGLIN LIU, *supra* note 14, at 7.

27. *Id.*

first identified case and the initial public announcement of the outbreak. By the time the government dealt publicly with the outbreak, SARS had garnered significant momentum and was on its way to other regions.

B. From Guangdong to Hong Kong and the Rest of the World

When Guangzhou health officials admitted to the SARS outbreak in February, they made it clear that the city was safe to live in and visit.²⁸ As a result, the public panic in the province received little attention in Hong Kong, which is only 174 kilometers (108 miles) away.²⁹ Any communication between the regions about the outbreak might have prevented its spread to Hong Kong. Unfortunately, no such communication occurred, and the border between the two regions was not monitored.³⁰

While one cannot reconstruct the exact route by which the deadly virus was transmitted to Hong Kong, Dr. Liu is widely believed to have set off the SARS epidemic there.³¹ Dr. Liu was one of the physicians who treated SARS patients, including Mr. Zhou, the “super spreader,” at Zhoushan No. 2 Hospital in Guangdong.³² On February 21, 2003, Dr. Liu travelled to Hong Kong to attend a wedding.³³ His arrival turned what was supposed to be a happy beginning into a tragedy.

When Dr. Liu checked into the hotel, he already had a fever and a dry cough, and experts believed that Dr. Liu left a trail of the deadly virus on the ninth floor.³⁴ At least sixteen people staying at the hotel were infected with SARS the same day.³⁵ Those people eventually carried the virus to Vancouver, Toronto, Singapore and Hanoi. Dr. Liu was later admitted to the Kwong Wah Hospital. Although he told doctors and nurses at the

28. Ho Shuwang, Huang ChuanJiang, *Bingqing yi kongzhi, shimin wuxu konghuang* [*The Disease is Under Control, so the Public Should Not Panic*], YANGCHENG WANBAO [GUANGZHOU EVENING NEWS], Feb. 11, 2003, <http://news.sohu.com/48/00/news206290048.shtml> (last visited Sept. 6, 2004) [hereinafter *The Disease is Under Control*]. This notice assured the public that there was no need for concern about the disease; it was not as serious as was rumored.

29. Jan Wong, *How China Failed the World*, THE GLOBE AND MAIL, Apr. 5, 2003, at F6 (discussing how the Chinese government failed to react to the spread of the deadly virus in the beginning of the outbreak).

30. CHENGLIN LIU, *supra* note 14, at 13.

31. Ellen Nakashima, *SARS Signals Missed in Hong Kong; Physician's Visit May Have Led to Most Known Cases*, WASH. POST, May 20, 2003, at A1.

32. John Pomfret, *In Chinese Village, Few Clues to Illness*, WASH. POST, Apr. 9, 2003, at A17.

33. Nakashima, *supra* note 31.

34. *Id.*

35. WHO, *SARS: Lessons From a New Disease*, at <http://www.who.int/whr/2003/chapter5/en/print.html> (last visited Sept. 6, 2004) [hereinafter *Lessons from a New Disease*].

hospital that he was highly contagious and asked to be isolated, the doctors did not heed his advice.³⁶ By the time doctors placed Dr. Liu in isolation, seventy hospital workers and seventeen students were infected.³⁷ Dr. Liu died of SARS on March 4, 2003.³⁸ In the end, 1755 people in Hong Kong were infected with SARS, of whom 299 died.³⁹

C. Entering Beijing⁴⁰

It was a bold step for the government of Guangdong, in the midst of mounting domestic and international criticism, to reveal the SARS outbreak. However, the epidemic at that point was far from controlled. The government tried to downplay the seriousness of the outbreak in order to rebuild Guangdong's tarnished image and minimize damage to the local economy.⁴¹ Most people outside Guangdong were convinced that the disease was mild with a minute fatality rate. As a result, no preventive measures were taken in Beijing and other Northern cities. Train travel between Guangzhou, Hong Kong and other domestic cities remained unrestricted.⁴²

Ms. Xu reportedly spread the SARS epidemic to Shanxi Province and the city of Beijing.⁴³ On February 18, 2003, Ms. Xu began her business trip to Guangzhou.⁴⁴ While on her way back home to Shanxi, Ms. Xu

36. Wong, *supra* note 29.

37. CHENGLIN LIU, *supra* note 14, at 13.

38. *Id.*

39. WHO, *Summary of Probable SARS Cases with Onset of Illness from 1 Nov. 2002 to 31 July 2003*, at http://www.who.int/csr/sars/country/table2004_04_21/en/ (last visited Sept. 6, 2004).

40. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, at 15–19.

41. *The Disease is Under Control*, *supra* note 28.

42. Lai Hailong, *Shei tuidao SARS duominnuo gupai?* [Who Knocked Over the SARS Domino Cards?], ZHONGGUO XIN WENSHE [CHINESE NEWS AGENCY], June 2, 2003, at <http://www.people.com.cn/GB/shizheng/19/20030603/1006910.html> (last visited Sept. 6, 2004); Pomfret, *supra* note 32.

43. This account is based on the following sources: Xing Bao, *Tale of a Superspreader*, SHANGHAI STAR, May 29, 2003, at <http://app1.chinadaily.com.cn/star/2003/0529/pr24-1.html> (last visited Oct. 19, 2004); *Beijing SARS Outbreak Cover up Claim*, F2 NETWORK, Apr. 14, 2003, at <http://www.smh.com.au/articles/2003/04/14/1050172524902.html> (last visited Sept. 4, 2004); Liu Chang, *Huabei diyili shuruxing feidian huanzhe shouci gongkai geren jingli* [The First Revelation of her Personal Experience of the First Imported SARS Patient in Northern China], PEOPLE'S NET, May 22, 2003, at <http://www1.people.com.cn/GB/shehui/212/10548/10648/20030522/998483.html> (last visited Sept. 6, 2004); Erik Eckholm, *Cases of Lethal New Illness Rise Sharply in Interior Region*, N.Y. TIMES, Apr. 15, 2003, at A6; Lai Hailong, *supra* note 42; Pomfret, *supra* note 32; Miao Ye, *SARS Wreaks Havoc in Shanxi Province*, ASIAN TIMES, Apr. 18, 2003, at <http://www.atimes.com/atimes/China/ED18Ad01.html> (last visited Oct. 19, 2004); *How One Woman Set Off the Outbreak in Beijing*, THE STRAITS TIMES, May 31, 2003, at <http://straitstimes.asia1.com.sg/sars/story/0,4395,192042,00.html> (last visited Aug. 4, 2004).

44. Liu Chang, *supra* note 43; Lai Hailong, *supra* note 42.

began to have a fever and chills.⁴⁵ She was admitted to a reputable hospital in Taiyuan, the capital city of Shanxi Province.⁴⁶ Doctors who treated Xu were unaware of the SARS outbreak in Guangzhou because no communication regarding the epidemic took place between Guangzhou and other cities.⁴⁷

On February 28, 2003, Ms. Xu was transferred to the 301 Military Hospital in Beijing, one of the most highly regarded hospitals in China. However, to Ms. Xu's dismay, doctors at this elite hospital were no better at diagnosing SARS than the local doctors in Shanxi.⁴⁸ Ms. Xu was first put in an observation ward where three patients were being treated for other diseases.⁴⁹ By the time a respiratory expert realized the unusual nature of her illness and put Ms. Xu under quarantine, a number of health workers and co-patients had been infected.⁵⁰ Ms. Xu was later transferred to the 302 Military Hospital for further treatment.⁵¹ During her transfer, the accompanying doctors and nurses took no preventive measures.⁵² Ms. Xu reportedly infected at least twelve health workers and patients in the two military hospitals.⁵³ Within two weeks, both of Ms. Xu's parents contracted SARS and died at the Beijing 302 Military Hospital.⁵⁴ In addition, Ms. Xu's one-year-old son, her brother, and her brother-in-law were all infected with the disease.⁵⁵

Unfortunately, the virus did not stop at the military hospitals. SARS cases were soon found in other hospitals in Beijing. At the No. 1 People's Hospital of Beijing University, ninety-three health workers were infected with SARS. Due to the high cross-infection rate, the entire hospital was sealed off for two weeks.⁵⁶ A retired university professor, who had visited the People's Hospital, contracted the deadly virus and died a week later.⁵⁷ The professor infected his family members, who subsequently set off the

45. Liu Chang, *supra* note 43.

46. *Id.*

47. *Id.*; Lai Hailong, *supra* note 42.

48. Liu Chang, *supra* note 43.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*; Lai Hailong, *supra* note 42.

53. CHENGLIN LIU, *supra* note 14, at 17.

54. *Id.*; *Beijing SARS Cover-up Claim*, *supra* note 43.

55. Liu Chang, *supra* note 43.

56. CHENGLIN LIU, *supra* note 14, at 68–69. Zhao Xiaojian, *Ren ming yi yuan da gui mo gan ran diao cha* [An Investigation on the Large Scale Infection at the People's Hospital], CAI JING MAGAZINE, extra edition on SARS, May 16, 2003, at <http://china.qianlong.com/4453/2003-5-20/43@850108.htm> (last visited Sept. 6, 2004).

57. CHENGLIN LIU, *supra* note 14, at 65.

SARS epidemic in two adjacent universities.⁵⁸ Several student dormitories in the two universities were put under full quarantine for weeks.⁵⁹ The “dominoes” continued to fall. The SARS epidemic spread rapidly; by the end of April, it took the entire city of Beijing hostage.

III. FIGHTING TO RELEASE SARS INFORMATION: AN UPHILL BATTLE⁶⁰

April 20, 2003 was the turning point in the battle against SARS in China. Prior to this date, the SARS epidemic was taboo in the Chinese news media. Both the local government in Guangdong and the highest health department in Beijing denied that SARS was a serious threat to public health.⁶¹ Both assured the public that SARS was a regional problem, confined to the southern part of China, and it was under control. The words “epidemic” and “outbreak” rarely appeared in the media.⁶² After April 20 the Chinese government took a completely different approach. Minister Zhang of the State Health Ministry and the Mayor of Beijing were removed from office, the national media was full of SARS reports, a daily SARS reporting system was established, and a national campaign against SARS was officially and openly launched.⁶³ In short, the SARS outbreak was no longer a secret. However, winning the battle over the release of the information was not easy.

58. *Id.* at 56–57.

59. Lou Yi, *SARS xiji zhongcai beijiiaoda diaocha* [SARS Attacked Central University of Finance and Economics and North Jiaotong University—A Report], CAI JING MAGAZINE, May 12, 2003, at <http://finance.sina.com.cn/roll/20030512/1651339387.shtml> (last visited Sept. 6, 2004). See also *Zhongyang caijing daxue zhi shehui gejie de yifeng ganxiexin* [CUFE's Letter of Thanks to the Public], REN MIN RI BAO [PEOPLE'S DAILY], June 10, 2003, at 12, <http://www.people.com.cn/GB/kejiao/40/20030610/1013014.html> (last visited Nov. 19, 2004).

60. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, at 21–32.

61. See Chen Yun, *Weishengbuzhang wu shiwei dai biao: Yue feidianxing feiyan yi kongzhi* [The Minister of Health Meets WHO Representative: Atypical Pneumonia in Guangdong is Under Control], RENMING WANG [PEOPLE'S NET], Mar. 19, 2003, at <http://www.people.com.cn/GB/shehui/47/20030319/947458.html> (last visited Sept. 6, 2004); Song Liyun, *Beijing shuruxing feidianxing feiyan dedao youxiao kong zhi* [The Imported Atypical Pneumonia in Beijing Is Under Control: Beijing is Completely Capable of Dealing with the Epidemic], Mar. 27, 2003, at <http://www.people.com.cn/GB/kejiao/20030327/955101.html> (last visited Sept. 6, 2004).

62. Zhang Zili, “Feidian” *Weiji yu jiankang chuanbo* [SARS Crisis and Media Reports on Health], MEDIA CHINA NET, at http://bbs.mediachina.net/index_bbs_cmrsd_view.jsp?id=563 (last visited Sept. 9, 2004). Fudan University School of Journalism in Shanghai, the leading journalism school in China, sponsors this website. Contributors include well-known professors, journalists and graduate students.

63. *Id.*; Li Qing, *Jiang Yanyong: Renmin liyi gaoyu yiqie* [Jiang Yanyong: People's Interests are Above All], SHANLIAN SHENGHUO ZHOUKAN [SHANLIAN LIFE WEEK], June 11, 2003, at 1, <http://www.peacehall.com/news/gb/yuanqing/2003/06/200306110947.shtml> (last visited Sept. 7, 2004); Nakashima, *supra* note 31.

Shortly after the government of Guangdong made its first official report about the SARS situation to the WHO on February 11, 2003, the local Health Bureau held a news conference.⁶⁴ During the conference, health officials denied any wrongdoing in handling the SARS epidemic information.⁶⁵ When a reporter asked why it took nearly three months for the government to release the information to the public, the Chief Director of the Health Department of Guangdong responded that “three hundred and five cases in Guangdong province were not too many, so it was not necessary to make a public announcement about the SARS epidemic. The only reason for releasing the information today is that the disease has caused social panic.”⁶⁶ Other health officials explained that the number of SARS cases (over 100) represented only a tiny portion of the city’s population of 10 million people.⁶⁷ When a reporter asked whether Hong Kong should restrict travel from Guangdong, the official replied that “no such disease has been found in Hong Kong,”⁶⁸ implying that no such steps were necessary.

In an effort to defuse speculation that the number of SARS cases was underreported, the Health Ministry of China held its first news conference about SARS on April 3, 2003.⁶⁹ News reporters from China and abroad were invited to the conference. Mr. Zhang, the Minister of Health, assured the public that SARS was under control, going so far as to tease a foreign cameraman who was wearing a facemask at the conference, saying, “China is safe to live in and travel to, . . . with or without a mask!”⁷⁰ Mr. Zhang’s calm demeanor and humorous disposition convinced the public that SARS was not serious and would soon fade away.⁷¹ According to Mr. Zhang, there were only twelve SARS cases and only three deaths in Beijing.⁷² Minister Zhang’s message convinced not only to the public, but

64. Xiao Ping et al., *Shiwen feidian xingfeiyian, sheng shi weishengbuman zuochu zhengmian huiying* [Ten Questions About the Atypical Pneumonia, Responses From the Health Departments of the Province and Municipality], JINYANG NET, Feb. 12, 2003, at http://www.ycwb.com/gb/content/2003-02/12/content_489180.htm (last visited Sept. 6, 2004) [hereinafter *Ten Questions*].

65. *Id.*

66. *Id.* See also Renming wei Jiankang, *supra* note 21.

67. *Ten Questions*, *supra* note 64.

68. *Id.*

69. Zhu Yu, Zhang Wenkang xiaoyan: “Zhongguo shi anquan de!” [“China is Safe!” said Zhang Wenkang with Smiles], XINHUA NEWS, Apr. 3, 2003, available at <http://www1.people.com.cn/GB/shizheng/3586/20030403/962519.html> (last visited Sept. 7, 2004).

70. *Id.*

71. CHENGLIN LIU, *supra* note 14, at 24.

72. *Id.* at 24–25.

also the WHO, which, after the news conference, took Beijing off its list of SARS-affected areas.⁷³

The national news media remained quiet about the SARS outbreak. Journalism scholars later referred to the news media's reaction to the SARS outbreak as "collective speechlessness."⁷⁴ On April 5, 2003, a month after Ms. Xu set off the outbreak in the two military hospitals, nearly one-quarter of Beijing residents between the ages of eighteen and sixty did not know what SARS was, much less how to take preventive measures.⁷⁵ Between February 10, 2003 and April 3, 2003, only two major national news reports were published about SARS, both of which assured that Guangzhou and Beijing were safe.⁷⁶

Dr. Jiang, a seventy-two-year-old retired surgeon, finally broke the silence about SARS.⁷⁷ After his best friend contracted SARS at the 301 Military Hospital, he conducted a preliminary investigation and discovered 146 SARS cases in the three military hospitals alone; this was more than ten times the figure Minister Zhang had released at the news conference.⁷⁸ On April 4, 2003, Dr. Jiang wrote a letter to China Central Television (CCTV-4) and to Phoenix, a Hong Kong-based television station.⁷⁹ In his letter, Dr. Jiang revealed that the SARS epidemic was far more serious than Minister Zhang had suggested.⁸⁰ In a separate letter, Dr. Jiang called on the Minister to resign for covering up SARS information in Beijing.⁸¹ After the stations refused to publish the letters, *Time Magazine* released Dr. Jiang's findings on the Internet in Susan Jakes's article, *Beijing's SARS Attack*.⁸²

73. Wen Zhao, *Kang feibeiwang Lv: Zhongyang zhengfu feichang mohe 70 tian* [A Memorandum on the Fight Against SARS: 70 Days' Grinding Period for the New Central Government], published originally in ZHONG HUA GONG SHANG SHI BAO [CHINA INDUSTRIAL AND COMMERCIAL TIMES], May 29, 2003, <http://www1.people.com.cn/GB/news/8410/20030529/1003196.html> (last visited Aug. 2, 2004) [hereinafter *70 Days*]. This article traces the development of SARS in Guangdong and how the government initially dealt with the disease and the social panic. It then gives a timeline of the Central Government's efforts to combat SARS. The article criticizes the approach that the government took in the early stages and praises the new government for its openness and effectiveness.

74. Yu Guoming, *2004 zhongguo chuanmei ye fazhan dashi tuixiang* [News Media Development Trends in 2004—Forecast], Apr. 29, 2004, ZHONGHUA CHUAN MEI WANG [CHINESE MEDIA NET], at http://academic.mediachina.net/lw_view.jsp?id=887 (last visited Sept. 9, 2004).

75. Zhang Zili, *supra* note 62.

76. *Id.*

77. Li Qing, *supra* note 63.

78. *Id.* According to this report, Dr. Jiang found that there were 46, 40 and 60 SARS cases in the No. 301, 302 and 309 Military Hospitals, respectively.

79. Li Qing, *supra* note 63.

80. Susan Jakes, *Beijing's SARS Attack*, TIME ASIA, Apr. 8, 2003, <http://www.time.com/time/asia/news/daily/0,9754,441615,00.html> (last visited Sept. 21, 2004).

81. *Id.*

82. *Id.*

Whistle-blowers in China are rare and usually face extreme government opposition. It took extraordinary courage for Dr. Jiang to disclose this information to the media. Many doctors, experts, and health officials were also aware of the severe situation in Beijing when Dr. Jiang challenged the underreported figures.⁸³ However, Dr. Jiang was the only one who spoke out.⁸⁴ In the Chinese political system, it is unwise to reveal top-secret information to the foreign press. His act is even more heroic considering that Dr. Jiang was a military doctor.⁸⁵

Dr. Jiang's letter played a crucial role in getting the information to the domestic public as well as to the international community.⁸⁶ The WHO publicly criticized the Government of Beijing for its poor cooperation after the actual facts regarding SARS in Beijing were released.⁸⁷ During a WHO press briefing, Dr. Heymann told reporters, "we have heard conflicting reports from health workers, [and] what's occurring in Beijing is more serious than what the government has told us."⁸⁸ The WHO subsequently added Beijing back to the list of the SARS affected areas.⁸⁹ On April 20, Minister Zhang was removed from his post and a National Campaign against SARS was launched.⁹⁰ Dr. Jiang became an instant hero.⁹¹

83. Dr. Jiang's brave act was lauded by colleagues, officials and the public alike. Dr. Zhu Chunwu, Dr. Jiang's classmate from medical school told reporters,

The later development of SARS proved what Dr. Jiang did was right. Many people I know believed that Dr. Jiang should be awarded with outstanding service. I know it was not the honor that he was pursuing, but he is really a hero in the people's minds. . . . Dr. Jiang did what a doctor should have done. During the time when the information was blocked, there could have been hundreds of people who had more accurate information than Dr. Jiang had, but Dr. Jiang was the only one who bravely spoke out. I am an infectious disease doctor and I should have been the one to speak out. However, I didn't. I am afraid I could not do it in the future. Dr. Jiang inspired all of us. I admire him.

Li Qing, *supra* note 63.

84. *Id.*

85. Jakes, *supra* note 80. Even though article 41 of the Constitution confers upon citizens the right to file complaints and charges against any state institution for violations of law or dereliction of duty, individuals rarely invoke this article. The Ministry of Health issued a notice in 1989 that clearly prohibits individuals from releasing any epidemic information to the foreign media. Ministry of Health, *Notice Regarding Authorization on the Announcement of an Epidemic Situation*, Nov. 8, 1989, in CHENGLIN LIU, *supra* note 14, at 149.

86. Li Qing, *supra* note 63.

87. Press Briefing, WHO, *Severe Acute Respiratory Syndrome* (Apr. 11, 2003), available at http://www.who.int/csr/sars/Press_2003_04_11/en/ (last visited Sept. 7, 2004).

88. *Id.*

89. *70 Days*, *supra* note 73.

90. *Id.*

91. *Id.*

IV. NEW GOVERNMENT AND NEW APPROACH⁹²

The SARS outbreak in Beijing coincided with the Tenth Plenary Session of the National People's Congress (Tenth NPC), held from March 5 to March 18, 2003, at which a new Chinese Central Government was elected. At the time, it was reported that all the major hospitals in Beijing were required to keep quiet about the SARS outbreak in order to create a stable environment for the congressional session.⁹³ During the Tenth NPC, state power was smoothly handed over from one generation to another. Mr. Hu Jintao was elected as the President of the People's Republic of China (PRC) and Mr. Wen Jiabao was appointed as the Premier of the State Council.⁹⁴ Mr. Zhang was reappointed as the Minister of Health at this congressional session.⁹⁵

Before the inauguration ceremony was over, the newly elected government faced an unprecedented challenge. The SARS outbreak presented two options: keep quiet and handle the crisis behind closed doors, or take an open and transparent approach. In the past, national emergencies, such as earthquakes, floods, and mining accidents, were handled quietly by the government. Some scholars have referred to this as a "black box" approach,⁹⁶ under which the public becomes aware of the situation only after the government has emerged victorious over the catastrophe. For example, approximately 30,000 people became infected with Hepatitis A in Shanghai in January of 1988.⁹⁷ The Government of Shanghai concealed news of this event until they controlled the situation.⁹⁸ This "black box" approach was admittedly effective in protecting Shanghai's booming economy and jubilant image.⁹⁹

92. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, ch. 3, at 36–37, 47, 50–52.

93. CHENGLIN LIU, *supra* note 14, at 37.

94. *Id.* at 36–37.

95. *Id.* at 37.

96. *Id.* at 47.

97. Xie Songxin, *City Fights Hepatitis A Epidemic*, CHINA DAILY, Jan. 26, 1988.

98. CHENGLIN LIU, *supra* note 14, at 51.

99. A news report about the outbreak appeared in the *China Daily*, an English-language newspaper in China with very few domestic readers. The newspaper was subsequently disciplined for revealing the top secret. Local news . . . kept absolute silence on the [outbreak].

This traditional approach still finds support today. In a lengthy article regarding the SARS "whistle-blower," one scholar accused Dr. Jiang of treason. [The scholar blamed Dr. Jiang for damaging China's image]. Clearly, the scholar was nostalgic for the old "black-box" approach, a view taken by deep-rooted supporters of the rigid past.

CHENGLIN LIU, *supra* note 14, at 51 (internal citations omitted).

In attempting to balance between economic loss and public health and safety, the new government chose to emphasize public health. This decision was not made easily. Steady economic growth and a stable social environment had been the two major achievements of the former government. The public had high hopes that the new government would maintain economic growth. Choosing a transparent approach required the government to forego economic gains and even suffer losses. For a nation accustomed to the “black box” approach, openly dealing with the SARS epidemic was a milestone. The new approach proved a tremendous success. The new government earned a reputation as a people-loving government that candidly addresses the serious social issues left over from the economic boom of the 1990s.¹⁰⁰

V. NEW REGULATIONS ON SARS

The SARS campaign took place from April 20 until June 24, 2003, during which time two major pieces of legislation were enacted: (1) *Regulations on Dealing with the Outbreak of Public Health Emergencies (Regulations)*,¹⁰¹ which was enacted by the State Council on May 9, 2003 and took effect on May 12, 2003,¹⁰² and (2) *Measures on the Prevention and Treatment of Infectious Atypical Pneumonia (Measures)*,¹⁰³ which was promulgated by the Ministry of Health and took effect on May 12, 2003.¹⁰⁴ In addition, *The Laws of the People's Republic of China on the Prevention and Treatment of Infectious Diseases (PTID)*,¹⁰⁵ which was originally passed by the NPC Standing Committee in 1989, was republished on April 26, 2003 by the State Council.¹⁰⁶ In summary, these laws and regulations

100. Zhao Ming, *Diaocha xianshi feidian hou daxuesheng dui xinyijie lingdao jiti geng xinlai* [Polls show high approval rate among college students of the new leadership], ZHONGGUO JINGJI SHIBAO [CHINA ECONOMIC TIMES], June 6, 2003, available at <http://news.sina.com.cn/c/2003-06-05/1027191083s.shtml> (last visited Dec. 30, 2004).

101. *Tū Fā Gōng Gòng Wèi Shēng shì Jian Ying Jì Tiáo Lì* [Regulations on Dealing with the Outbreak of Public Health Emergencies] (2003), translated in CHENGLIN LIU, *supra* note 14, at 111 [hereinafter *Regulations*].

102. *Id.*

103. *Chuán Rǎn xìng Fēi Diǎn Xíng Fèi Yán Fáng Zhì Guǎng Lǐ Bàn Fǎ* [Measures on the Prevention and Treatment of Infectious Atypical Pneumonia (SARS)] (2003), translated in CHENGLIN LIU, *supra* note 14, at 123 [hereinafter *Measures*].

104. *Id.*

105. *Zhōng Huá Rén Mǐn Gòng Hé Guó Chuán Rǎn Bìng Fáng Zhì Fǎ* [Law of the People's Republic of China on Prevention and Treatment of Infectious Diseases] (1989), translated in CHENGLIN LIU, *supra* note 14, at 133, available at <http://www.lawinfochina.com/dispecontent.asp?10=1203&DB=1> (last visited Sept. 7, 2004) [hereinafter *PTID*].

106. CHENGLIN LIU, *supra* note 14, at 56.

addressed three issues: emergency information reporting, treatment, and prevention.

A. Emergency Information Reporting

The most effective way to control the spread of the SARS epidemic is to take prompt action and isolate the disease where it first strikes. The speed and efficiency of modern travel allow disease to spread rapidly, and any delay could result in the disease being transmitted to other regions. Therefore, time is of the essence in preventing the spread of SARS.

The local government of Guangdong concealed SARS for nearly three months.¹⁰⁷ Beijing may have had time to take measures to prevent the disease from entering the city if information about SARS had not been concealed. Unfortunately, Beijing sat defenseless as SARS approached.¹⁰⁸ To make matters worse, high-ranking health officials tried their best to cover up the vital information once SARS cases began emerging in Beijing.¹⁰⁹ To disseminate information effectively, the new laws specifically delineate when to report, how to report, to whom the original report should go, and how the department receiving a report should deal with the information.

*1. Reporting Information*¹¹⁰

Article 19 of the *Regulations* specifies that the Health Department of the State Council shall be in charge of establishing an emergency reporting system.¹¹¹ Not more than nine hours may elapse from discovery to the reporting of a case to the State Council, the highest authority.¹¹² To achieve this goal, articles 19 and 20 set forth several steps for governments at various levels to follow.

First, according to article 19, if a public health emergency occurs a provincial government that has received epidemic information has one hour to report it to the Health Department of the State Council.¹¹³ The law also requires the Health Department to report to the State Council when an emergency is of a significant danger to the public.

107. *See id.* at 51.

108. *Id.*

109. Jakes, *supra* note 80.

110. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, § 4.2, at 58–59.

111. *Regulations*, *supra* note 101, ch. 3, art. 19.

112. CHENGLIN LIU, *supra* note 14, at 60.

113. *Id.* at 58 (citing *Regulations*, *supra* note 101, ch. 3, art. 19).

Second, article 20 requires medical institutions that have a confirmed or suspected case of SARS promptly report this to the local county government.¹¹⁴ After receiving the report, the local government and its health department must forward it to higher levels of the government. This transfer of information should not take more than two hours.

Additionally, article 20 provides a “fast track” for a health department at the county level to issue a report directly to the State Council.¹¹⁵ The usefulness of the “fast track” is questionable, though, because no health department would be willing to employ it as the department is directly under the control of local government, which appoints the department’s members. Thus, the department’s members are unlikely to bypass those to whom they are beholden for their positions.

The “fast track” is unlikely to be employed for other reasons as well. First of all, a local health department generally will not bypass the local government if the local government regulations are in conflict with central authority regulations. In addition, the governments at prefecture and provincial levels are reluctant to let a county health department send a report directly to the Central Government without their permission. Reporting an epidemic may result in administrative discipline or even dismissal of officials at lower levels. Therefore, it is unlikely that local health officials would take the bold step of reporting directly to Beijing without first informing the local government. All of these factors make the “fast track” almost impossible in practice.

Indeed, it appears that lawmakers were not confident in the “fast track” when they drafted the law. Article 22, for example, requires the local government or health department that receives a report to organize a taskforce that will investigate and confirm the report.¹¹⁶

2. *Releasing and Announcing Information*¹¹⁷

While reporting relevant information is important, it is only the first step toward establishing a transparent system. If information stops at a higher level, the system ceases to function. The flow of information should be vertical toward governments at higher levels and horizontal toward related departments, neighboring regions, and the public.

114. *Id.* at 59 (citing *Regulations*, *supra* note 101, ch. 3, art. 20).

115. *Id.* (citing *Regulations*, *supra* note 101, ch. 3, art. 20).

116. *Id.* (citing *Regulations*, *supra* note 101, ch. 3, art. 22).

117. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, § 4.2, at 60–62.

The reasons are threefold. First, regional communication is the key to preventing an infectious disease from crossing borders. When health workers in Guangdong first noticed an unusual disease, they promptly reported it to health officials. Unfortunately, the officials did not share this information with Hong Kong, its neighbor to the south. Similarly, the disease may have been prevented from entering Beijing if the city had taken proactive measures to control traffic between Guangzhou and Hong Kong. Second, releasing information to other government departments is vital to allow these departments to coordinate epidemic control measures. The SARS epidemic demonstrated that preventive measures can not be effectively implemented unless other departments, for example the Ministry of Railways and the General Bureau of Airlines, are involved. These departments are vital for screening passengers and stopping the spread of SARS through the use of public transportation. Third, releasing information to the public can effectively reduce casualties, prevent rumors and panic, and win public support. Without public cooperation, the massive quarantine in Beijing would not have been successful.

Lawmakers were aware of the problems caused by the lack of horizontal flow of information in the beginning of the outbreak. Article 23 of the *Regulations* requires the State Council to promptly release information to other related departments including hospitals and health departments of the Army. The provision also stipulates that the Head Official of any province experiencing an epidemic should inform neighboring provinces or regions of the outbreak.¹¹⁸

However, article 23 is difficult to implement in practice. Under the centralized system, emphasis is placed more on vertical subordination of the local governments to the Central Government, rather than on cooperation between local governments at the same level. This problem can be traced back to Mao's era (1949–1976), when self-reliance was advocated and interregional contact was minimal. With the economic reform, the increasing trade flow across provincial borders necessitated closer coordination between different regions. However, there was no system in place to facilitate this need. This is illustrated by the fact that, in some extreme cases, even court judgments of one province are not enforced in another.¹¹⁹ Thus, it should not be surprising that, during the SARS outbreak, the spread of the virus was largely attributable to a lack of cooperation and coordination among various regions.

118. *Id.* at 61 (citing *Regulations*, *supra* note 101, ch. 3, art. 22).

119. See Chris X. Lin, *A Quiet Revolution: An Overview of China's Judicial Reform*, 4 *ASIAN-PAC. L. & POL'Y J.* 255, 283 (2003).

A system of making information public is described in article 25. The Central Government must inform the public of any epidemic information that provincial level governments report. The local government may then be authorized by the Central Government to publicly announce possible outbreaks independently. Article 25 states that the “announcement should be up-to-date, accurate, and comprehensive.”¹²⁰ However, article 25 does not provide guidance on interpreting the phrase “up-to-date, accurate, and comprehensive.” It is thus unclear how soon the public should be informed after an epidemic is reported to the Central Government. Unlike the two-hour time limit imposed on lower governments at various levels, there is no specific provision in the *Regulations* that obligates the Central Government to provide information to the public within a comparable time frame. In the context of legal responsibility, no punishment is available if the Central Government does not promptly announce vital information to the public. In practice, article 25 gives the Central Government vast discretion in deciding whether or when to release information about an epidemic that was reported from lower governments or health departments.

3. *Individual’s Right to Report*¹²¹

Lawmakers drafting the *Regulations* were concerned that the entire reporting system would fail if any level of government did not promptly pass along information. The situation in Beijing proved that an individual can make a real difference in dispersing information and can in this sense, help ensure that the transfer of information is maintained. In this regard, Dr. Jiang served as a great example of individual reporting by releasing vital information that Health Ministry grossly underreported.¹²²

In the *Regulations*, the lawmakers embedded an important provision for protecting whistleblowers. Article 24 provides that any unit or individual has the right to report an outbreak of an epidemic to the relevant government department, which in turn must conduct a thorough investigation of the situation.¹²³ The unit or individual who has informed the government of an outbreak should be rewarded.

While the law provides that the informers should be rewarded, it does not specify or refer to punishment for retaliation by the local government.

120. *Regulations*, *supra* note 101, ch. 3, art. 25.

121. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, § 4.2, at 62–64.

122. *See supra* notes 77–82 and accompanying text.

123. CHENGLIN LIU, *supra* note 14, at 63 (citing *Regulations*, *supra* note 101, ch. 3, art. 24).

The major concern for most people is how to go about life after revealing the government's failure. Informers who continue to live under the same authority will be under constant pressure from the local government. Therefore, even with the rights conferred by the *Regulations*, most potential informers will likely choose to stay silent in the face of government irregularities.

Although the law allows an individual to report a local government's failure to the government at higher levels, it does not specify whether the individual enjoys the right to release related information to the media. According to a notice issued by the Health Department in 1989 that is still in force, no unit or individual may release and announce epidemic information to foreign media or publish unannounced epidemic information without the authorization of the Health Department.¹²⁴

4. *Legal Liabilities for Failing to Report Emergency Information*¹²⁵

Without adequate sanctions on those who impede the flow of information, the reporting system would not be effective. Article 22 states that any unit or individual should not conceal, delay, or falsely report emergency information, or direct others to do so. The sanctions are set forth in article 45 of the *Regulations*, which also states that the head of the department is required to take all responsibility for a failure to report. These penalties range from demotion to a lower administrative rank to removal from one's administrative position, depending on the seriousness of the concealment. The article also leaves the door open for criminal charges against the leader of a department if late reporting causes a massive spread of the disease. The Supreme Court and Procuratorate have interpreted the related articles of the *Criminal Law* regarding epidemic prevention and detailed possible criminal charges against a person who fails to report vital information. The penalties range from criminal detention to imprisonment of up to three years.¹²⁶

124. *Id.*, at 63–64 (citing *Regulations*, *supra* note 101, ch. 3, art. 24; *Notice Regarding Authorization on the Announcement of an Epidemic Situation*, *supra* note 85).

125. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, § 4.2, at 64–65.

126. CHENGLIN LIU, *supra* note 14, at 64. Article 16 of the *Interpretation* reads

After the State takes measures for the prevention and control of an epidemic of an infectious disease, any of following shall be considered “a serious circumstance” under Article 409 of the *Criminal Law*:

b. Concealing, delaying or filing a false report or directing others to do so about the information on the epidemic, causing the spread of the epidemic.

It is important to note that article 16 of the *Interpretation* contains a crucial clause that exempts high ranking officials from any criminal punishments when they have concealed, delayed reporting, or made misleading announcements about the epidemic before April 20, 2003. This clause appears to strip away all legal grounds for possible criminal charges against officials whose misconduct caused the spread of SARS.

Consequently, the former Minister Zhang and former Mayor Meng were not subject to any criminal investigation for mishandling vital information on SARS, because they were removed before the *Interpretation* was promulgated.¹²⁷

B. Treatment

Before the new laws were enacted, health departments issued a number of guidelines to hospitals on the treatment and prevention of SARS. These guidelines were issued in great haste and produced mixed results. Nevertheless, these guidelines shaped many of the relevant provisions of the new laws on SARS.

1. Designated Hospitals¹²⁸

To deflect social attention away from SARS, especially during the congressional session, the Health Ministry required all SARS patients to be treated at the hospitals where they were admitted. This method was referred to as the “absorb” method. Officials hoped that hospitals could treat SARS cases and eliminate the disease without causing public panic like that in Guangzhou. The “absorb” method was consistent with the “black box” approach.

The “absorb” requirement was a complete failure. Hospitals not only failed to provide proper care to SARS patients, but the hospitals

Article 409 of the *Criminal Law*

Any functionary of an administrative department for public health who is engaged in prevention and treatment of infectious diseases, through his gross neglect of duty, causes the spread or epidemic of an infectious disease, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Id. at 64–65 (citing *Zuì Gāo Rén Mǐn Fǎ Yuàn Zuì Gāo Rén Mǐn Jiǎn Chá Yuàn Guān Yú Bàn Lǐ Fáng Hài Yù Fáng Kòng Zhì Tǔ Fā Chuán Rǎn Bìng Yì Qíng Dēng Zāi Hài De Xíng Shì Ān Jiàn Jù Tǐ Yīng Yòng Fǎ Lǜ Ruò Gān Wèn Tí De Jiě Shì* [The Interpretation of Laws in Criminal Cases Regarding Obstruction of the Prevention and Control of the Outbreak of Infectious Diseases], art. 16, translated in CHENGLIN LIU, *supra* note 14, at 146) [hereinafter *Interpretation*].

127. See Li Qing, *supra* note 63.

128. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, § 4.2, at 68–72.

themselves became a source of infection. The No. 1 People's Hospital of Beijing University, where ninety-three medical personnel were infected, is an unfortunate example. It is unknown how many patients who were treated at the hospital contracted SARS. In order to prevent further infection, the whole hospital was sealed off with all medical personnel and patients kept inside for two weeks.

In analyzing the causes for the cross-infection, the People's Hospital director explained that, because the hospital was originally designed to accept over one million patients annually, the service sections were streamlined to accommodate a high patient flow. Blood test labs, X-ray units, billing offices, pharmacies and other service stations were located close together. The People's Hospital, as a result, did not effectively adapt to cope with the SARS epidemic, even though it was one of the best equipped hospitals in Beijing. For small hospitals, it was almost impossible to meet the unprecedented challenge of quarantine due to budgetary constraints.¹²⁹

The catastrophe in the People's Hospital and other hospitals caused health officials to revisit the so-called "absorb" method. Based on the experience in Guangdong, some experts proposed designating a few hospitals with good medical facilities as SARS-designated hospitals suitable for treating infectious diseases. These designated hospitals played an important role in lowering the cross-infection rate at the start of the outbreak; however, the sharp increase of SARS patients soon caused these hospitals to be overwhelmed. The government decided to construct a specialized SARS hospital in a suburb of Beijing.¹³⁰ This new hospital, containing 1,000 beds, was built in only seven days¹³¹ and accepted the first group of patients on May 1, 2003.¹³² By the time the last patients were discharged less than two months later, the new hospital had admitted 680 patients, of whom only eight died of SARS. As a result, the new hospital substantially reduced the pressure that hospitals in the urban areas faced.¹³³

Based on the lessons learned from the early effort in combating SARS, article 23 of the *Measures* provides that SARS patients must be treated in a designated SARS hospital. As previously mentioned, not all hospitals are suited to accommodate the special needs of SARS patients. Accordingly,

129. See WHO Press Briefing, *supra* note 87.

130. *Beijing shi di si fangzhi feidian gongzuo xiwen fabuhui xianchang shilu* [Beijing SARS Control Center News Conference No. 4], QIANLONG XIWEN WANG, May 6, 2003, available at <http://news.sohu.com/41/36/news209073641.shtml> (last visited Sept. 6, 2004).

131. *Id.*

132. *Id.*

133. *Id.*

the law specifies that designated hospitals must be equipped with the necessary facilities and staffed with experienced health workers.¹³⁴

These detailed provisions are reinforced by a broadly-sweeping delegation of power to the local government. To ensure that the urgent needs of the designated facilities are met, articles 32 and 33 of the *Regulations* grant the government broad powers to mobilize medical materials and health workers in the event of an emergency.

2. *Fever Clinics at Regular Hospitals*¹³⁵

To ensure that regular hospitals continue to provide medical care for non-SARS patients, article 24 of the *Measures* requires that all regular hospitals set up fever clinics for patients who have a fever or are suspected to have been infected with SARS. Separate fever clinics must be staffed with medical personnel who have knowledge of infectious diseases and the training necessary for dealing with them. Fever clinics are designed to serve only as transit stations where patients suspected of being infected with SARS receive their initial medical observations and treatments. These patients must be transferred to the appointed hospitals as soon as possible. Meanwhile, the fever clinics must report the cases to the local government, as well as the health department. Article 25 of the *Measures* specifies these duties of hospitals in dealing with SARS patients.¹³⁶

Setting up fever clinics in regular hospitals was not without problems. While the fever clinics reduced the chances of cross-infection in the hospitals, the public remained skeptical of their effectiveness, especially after People's Hospital was closed. As a result, the number of hospital stays declined sharply in Beijing and other cities. Absent a life-threatening illness that needed immediate medical attention, most people chose to stay at home. A report from Jilin University Hospital indicated that hospital visits were reduced by nearly seventy-eight percent in May.¹³⁷ Patients in several cases declined better hospital treatment for fear of being infected with SARS. In April, the death rate among patients with chronic illnesses in Changchun jumped threefold compared with that in March.¹³⁸

134. CHENGLIN LIU, *supra* note 14, at 71 (citing *Measures*, *supra* note 103, ch. 5 art. 23).

135. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, § 4.2, at 72–74.

136. *Id.* at 73; see *Regulations*, *supra* note 101, ch. 3 art. 24; *Measures*, *supra* note 103, ch. 3 art. 25.

137. Zhang Yulai, *Miandui feidian: hui feidian jiyi bi feidian geng kepa* [Fear of Going to Hospital is Worse than SARS], PEOPLE'S NET, June 12, 2003, at <http://past.people.com.cn/GB/other4583/4588/5815/20030612/1015892.html> (last visited Sept. 6, 2004)).

138. *Id.*

3. *Free Treatment for SARS Patients*¹³⁹

The new laws also specify that hospitals should provide free treatment to SARS patients who cannot afford medical expenses.¹⁴⁰ In some reported cases, hospitals refused or delayed admission to SARS patients. For example, seven people were sent to the Hospital of Inner Mongolia Medical School on April 16, 2003, and were all diagnosed as suspected SARS patients. However, the hospital refused to admit them because the patients could not afford the deposit of RMB 2,000 (\$241) per person.

Refusing to accept SARS patients jeopardizes the patient's health and safety and puts the public at a higher risk because the disease is extremely infectious. Citing the law on infectious disease, the Health Ministry issued an urgent notice on April 22, 2003 that required all hospitals to accept SARS patients without exception. The circular warned that any individual who refused to admit SARS patients could face administrative discipline or even criminal investigations if the refusal caused serious consequences.¹⁴¹ The *Measures* included a similar provision in article 29.

The government encountered enormous challenges in implementing the above rules. There are several reasons that hospitals were reluctant to admit SARS patients. First, they were afraid that the spread of the virus would put doctors, nurses, and patients in great danger because medical workers were among the very first victims of the outbreak. Second, after the economic reform in the 1980s, hospitals were pushed into market reliance. Many of the hospitals heavily relied on the revenue coming from patients. High cross-infection rates would hurt a hospital's reputation, thus reducing the volume of patient visits. Third, SARS treatment could be extremely expensive, costing hospitals up to RMB 100,000 (\$12,000) per patient. To conform to the laws, hospitals had to cover the costs for patients without health insurance. Even though the Central Government required local departments to pay the medical expenses for the uninsured, these departments did not always keep their promises as they are reported to have withheld the funds for an indefinite period of time, or dispersed the specialized funds for other purposes.

139. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, § 4.4, at 74–76.

140. *Measures*, *supra* note 103, ch. 4, art. 29.

141. Tian Yu & Zhang Jingyong, *Tuiwei jushou feidan bingren yao fu falu zeren* [Refusal to Accept SARS Patients may Result in Legal Responsibilities], XINHUA NEWS, Apr. 22, 2003, available at <http://www.people.com.cn/GB/shizheng/20030420/976414.html> (last visited Sept. 5, 2004).

To solve the financial pressure facing both patients and hospitals, the Ministry of Finance allocated RMB 2 billion (\$242 million) for SARS prevention and treatment, a considerable portion of which was used for covering the treatment of the uninsured SARS patients.¹⁴² The provincial governments were also encouraged to set up special financial reserves for dealing with the emergency.

On April 28, 2003, the government of Hubei province issued a notice that the government would pay the medical costs for SARS patients and suspected SARS cases. In order to do so, a special fund in the amount of RMB 20 million (\$2.41 million) was established for SARS prevention and treatment. The fund was to cover the medical expenses of farmers, migrant workers, and urban residents who contracted SARS and were without medical insurance. For those who had medical insurance, but whose medical expenses exceeded the insurance coverage, the fund would be used to cover the difference. The notice also required that no hospital be allowed to refuse SARS patients or unnecessarily transfer them.¹⁴³

It was difficult to implement the financial aid rules with regard to SARS patients who could not afford the medical expenses. SARS is not a disease that can be diagnosed right away. In most cases, patients have to be put under observation and go through various tests. If the patient is not eventually diagnosed with SARS, he must pay his own bill. For example, a migrant worker at a construction site in Beijing was put under epidemiological observation at a hospital in April 2003. As no further symptoms developed, he was discharged two weeks later, but was billed RMB 5,000 (\$600), which was approximately equal to his total annual income.¹⁴⁴

142. Qi Zhongxi, *Caizhengbu gongbu zhongyang caizheng 20 yi feidian fangzhi jijin de yongtu* [The Ministry of Finance Allocated 2 Billion Yuan for SARS Prevention and Treatment], XINHUA NEWS, Apr. 30, 2003, available at <http://www.people.com.cn/GB/shizheng/3586/20030423/978677.html> (last visited Sept. 5, 2004).

143. *Hubei Xuanbu: Feidianxing feiyan huanzhe Zhiliao jingfei yiy mianfei* [Hu Bei Announces All the Medical Charges for SARS Treatment Exempted], SICHUAN ZAI XIAN [SICHUAN ONLINE], Apr. 28, 2003, available at <http://domestic.scol.com.cn/dffb/20030428/2003428140649.htm> (last visited Sept. 5, 2004).

144. *Qieduan SARS chuanbo xumai sandao kan* [Three Hurdles to Cutting SARS Transmission], JINGHUA TIMES, June 1, 2003, <http://business.sohu.com/73/62/article209686273.shtml> (last visited Sept. 5, 2003).

C. Prevention

1. Screening Migrant Workers¹⁴⁵

One significant result of the open reform policies carried out since the late 1970s has been the vanishing of *hukou*, the rigid residential registration system that restricted people from working across regions. As a result, the workforce has become mobilized.¹⁴⁶ According to the Vice-Mayor of Beijing, 620,000 migrant workers were working in more than 3600 construction sites during the SARS outbreak in Beijing.¹⁴⁷ This number did not include the migrant workers who accounted for the major workforces in other industries, such as restaurants, hotels, home services, furniture making and moving, plumbing, waste disposal, and so on. The exact number of migrant workers in Beijing is unknown.

As the SARS situation worsened, many migrant workers in Beijing began to flee the city and return to their hometowns. In some cases, migrant workers escaped mandatory quarantine in Beijing and took a train home. For example, Mr. Xu left No. 261 Hospital in Beijing without permission. On his way back to Sichuan Province, Xu had a high fever and was diagnosed as a suspected SARS case. Eight people who had contact with Xu on the train were subsequently put under observation.¹⁴⁸

145. This Part is adopted with permission from CHENGLIN LIU, *supra* note 14, § 4.5, at 80–82.

146. CHENGLIN LIU, *supra* note 14, at 80.

In addition, the growing rural population and the diminishing arable farmland have combined to contribute to the surplus of labor resources in remote areas. Since the 1980s, a growing number of migrant workers have stormed into cities large and small, searching for jobs and better lives. The migrant workers have assumed jobs that require manual labor and long hours, and they have become an indispensable workforce in the cities. While migrant worker [sic] have made great contributions to improve urban standards of living, they are also blamed for social problems and rising crime rates.

Id. See Zhang Ye, *Migrant Woman Workers and the Emerging Civil Society in China*, ASIA FOUNDATION, <http://www.asiafoundation.org/pdf/ZhangYe.BSR.pdf> (last visited Sept. 5, 2004).

147. CHENGLIN LIU, *supra* note 14, at 80. See Zhang Mao, *guanyu jinyi shiqi Beijing fangzhi feidianxing feiyan gongzuo qingkuang baogao* [A Work Report on the Recent Work of SARS Prevention and Treatment in Beijing], QIANLONG WANG, May 30, 2003, <http://beijing.qianlong.com/3925/2003-5-30/83@872492.htm> (last visited Sept. 5, 2004).

On behalf of the Municipality, Zhang Mao, the Vice Mayor of Beijing, presented this to the fourth meeting of the 12th Session of People's Congress of Beijing on May 30, 2003. At the end of May, the numbers of SARS patients dropped sharply and the overall situation of the epidemic improved significantly. This is a comprehensive report that documented the major measures taken by Beijing Government [sic] in combating SARS. However, the report did not include the challenges that the city faced. It is a good source for finding basic statistics regarding the SARS epidemic.

CHENGLIN LIU, *supra* note 14, at 80–81 n.57.

148. CHENGLIN LIU, *supra* note 14, at 80–82 (citing Li Xuemei, *Yi fashao mingong shanli Beijing, tongche jiejuzhe quanbu geli* [A Migrant Worker with High Fever Left Beijing Without Permission,

The wave of migration was of great concern to the government because these migrant workers could bring the virus back to their home provinces. These workers usually came from poor rural regions where medical networks barely existed. Though SARS has no cure, high quality medical care plays an important role in treating the complications resulting from a SARS infection. If workers set off an epidemic back home, the consequences would be unimaginable.

The Vice Governor of Hebei Province expressed great concern about migrant workers who returned home from SARS-affected areas such as Beijing and Guangdong. 2.9 million migrant workers came from Hebei, 800,000 of whom were working in Beijing. By May 28, around 1.28 million of those migrant workers were returning home. On April 28 alone, there were 250,000 returnees. To ease the return waves, the government arranged for neighbors to take care of the wheat fields for those who were working in Beijing or Guangzhou in order to encourage the migrant workers to stay where they were.¹⁴⁹

In the meantime, local governments took measures to monitor the returning migrant workers closely to keep the virus out of their regions.¹⁵⁰ Screening measures included setting up checkpoints at local train stations and bus stops, and imposing quarantine on all the returnees for two weeks.

Also, to reduce the danger of spreading SARS to those migrant workers' hometowns, the government required all the companies that employed migrant workers to comply strictly with the so-called "three-local principles": First, the prevention work for healthy workers must be carried out locally. Second, epidemiological observation of the workers in close contact with SARS patients must be conducted locally. Third, confirmed cases must be treated locally. If any company failed to do so, various sanctions would be imposed. For example, in April, Dahua Company's license for conducting construction projects in the Beijing market was revoked due to its failure to control migrant workers. The license was revoked when 101 migrant workers fled Beijing to their home provinces after a worker was infected with SARS.¹⁵¹ The "three local" principles were codified in article 28 of the *Measures*.

all Persons in Close Contact have been Quarantined], XINHUA NET, June 7, 2003, available at <http://www.scol.com.cn/domestic/szlb/20030607/200367171905.htm> (last visited Sept. 5, 2004)).

149. Ruan Yulin, *Hebei Gaoguang: Nongcun kangji feidian yali zuida de shi fanxiang mingong* [Hebei High-Ranking Official: The Biggest Pressure for Combating SARS Comes from Returning Migrant Workers], ZHONG XIN NEWS, May 29, 2003, available at <http://www.scol.com.cn/domestic/dfbb/20030529/2003529112440.htm> (last visited Sept. 6, 2004).

150. *Id.*

151. Pei Yanlong & Li Jianlong, *Guanli shikong mingong lijing, danwei fangfei buli bei qingchu*

2. *Intentional Spreading of SARS*¹⁵²

Not all SARS patients were cooperative when facing compulsory quarantine. First, some people who had close contact with SARS patients or suspected cases did not believe that they were infected and felt it was a waste of time for them to be put into isolation. In addition, because many hospitals became sources of infection in the beginning, most people were afraid of being infected with the disease in the isolation wards. Second, both SARS-designated hospitals and the isolation wards in regular hospitals were set up in a great hurry in order to comply with the government requirements. As a result, the conditions in these hospitals and wards were poor. In remote regions, the conditions were even worse.

There were several reported cases where SARS patients or persons suspected to be infected with SARS escaped quarantine and caused SARS to spread. On rare occasions, the patients were believed to have spread SARS deliberately.

On May 5, 2003, Li Song was arrested on charges of obstructing the prevention of infectious disease and treatment, and endangering public security through dangerous means, in violation of the *Criminal Law*. Li Song, a doctor at the Ba Meng Rail Service Hospital, attended a training program at Beijing University of Chinese Medicine from February to March, 2003. He fell ill on March 20 in Beijing, but was not immediately diagnosed with SARS. Li Song went back home to Lihe by train on March 27, 2003, and was treated at his father's clinic. After April 6, Li Song's father, mother, wife, two brothers, sister-in-law, and a nurse at the clinic, who attended to Li's family, developed the same symptoms. On April 12, Li's father became the first in Linhe to die of SARS, with Li's mother and wife dying of the same disease in the following days. 102 SARS cases were subsequently reported in Lihe, many of which could be traced to Li, the first SARS patient in that region.¹⁵³

After being transferred from his father's clinic to Ba Meng Hospital, Li allegedly left his ward on April 8 and was seen in public for eight hours.

Beijing shichang [A Company was Driven Out of the Beijing Market for Not Being Able to Prevent Migrant Workers Fleeing the Capital During the Outbreak], BEIJING YULE XINBAO [BEIJING ENTERTAINMENT POST], May 12, 2003, <http://www.people.com.cn/GB/shehui/47/20030512/989668.html> (last visited Sept. 5, 2004).

152. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, § 4.2, at 83–85.

153. CHENGLIN LIU, *supra* note 14, at 83, citing Li Zebing & Zhang yunlung, *Neimenggu daibu yiming shexian fanzui de feidian bingren* [A SARS Patient was Arrested as a Criminal Suspect in Inner-Mongolia], GUANGMING RIBAO [GUANGMING DAILY], May 8, 2003, <http://www.gmw.cn/01gmrb/2003-05/08/2003-05-08-Homepage.htm> (last visited Dec. 30, 2004).

Li was brought back to the hospital by the local police department. Because Li was diagnosed with SARS on April 12, it was not clear whether he was put into isolation and was under compulsory quarantine when he left the hospital; nonetheless, Li Song was later charged with deliberately spreading SARS, under articles 114 and 115(1) of the *Criminal Law* (dealing with crimes of endangering public security through using dangerous means).¹⁵⁴

Li's case was regarded as the first in which the government resorted to criminal sanctions in order to impose compulsory quarantine on a SARS patient. It was widely believed that Li's case directly led to the promulgation of the interpretation of the relevant articles of the *Criminal Law* regarding public safety jointly issued by the Supreme People's Court and Supreme People's Procuratorate (*Interpretation*). According to this *Interpretation*, those who cause death or serious injury by deliberately spreading the virus can be sentenced to a fixed prison term ranging from ten years to life imprisonment. They may even face the death penalty.¹⁵⁵

154. Li was also charged with obstructing the prevention and treatment of an infectious disease due to his behavior after he was diagnosed with SARS.

On the day his father died, Li Song was diagnosed with SARS and was put into isolation. Stricken by the sudden loss of close family members, Li blamed the medical staff for not providing enough medical care to his father. He smashed a window and assaulted a doctor. Li became even more furious when he learned that his father's corpse could not be dressed in a traditional Chinese manner [because] the health authorities had disposed of the corpse according to the *Implementing Measures of the PTID* in order to prevent further spread of the disease.

CHENGLIN LIU, *supra* note 14, at 84.

155. CHENGLIN LIU, *supra* note 14, at 83–84 (citing *SARS Patient Arrested*, *supra* note 153). Article 1 of the *Interpretation* states: "Whoever intentionally spreads the pathogens of a sudden infectious disease and endangers public security shall be punished in according [to] Articles 114 and 115 (1) of the *Criminal Law* on crimes of endangering public security through using dangerous means." *Interpretation*, *supra* note 126, art. 1.

Whoever commits arson, breaches a dike, causes explosion, spreads poison or uses other dangerous means to sabotage any factory, mine, oilfield, harbor, river, water source, warehouse, house, forest, farm, threshing ground, pasture, key pipeline, public building or any other public or private property, thereby endangering public security but causing no serious consequences, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Zhōng Huá Rén Mín Gònghé Guó Xíng Fǎ [People's Republic of China's Criminal Law], art. 114 (Ch.) (1997), <http://www.lawinfochina.com/dispccontent.asp?10=12185&DB=1> (last visited Sept. 7, 2004) [hereinafter *Criminal Law*].

Whoever commits arson, breaches a dike, causes explosion, spreads poison or inflicts serious injury or death on people or causes heavy losses of public or private property by other dangerous means, shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Criminal Law, art. 115(1).

As of this writing, there is no follow-up report on Li's case. It is unclear whether Li was held according to the *Criminal Law*.

3. Railroads¹⁵⁶

The railroads are the primary means of transportation for long-distance travel in China. These trains are often overloaded with passengers, and there is insufficient air circulation within the crowded compartments. If a SARS patient sits in a compartment for hours, if not days, there will be a substantial risk to the passengers around him due to the fact that SARS can be spread through respiratory droplets. In addition, as trains make frequent stops at various cities and towns, it is very difficult to conduct epidemiological investigations on those in close contact with SARS patients.

On April 12, 2003, the Transportation Ministry, Railroad Ministry, Airline Bureau, Health Ministry, and Finance Ministry jointly issued a notice requiring that their related departments take measures to prevent SARS from spreading through public transportation, including trains, boats, long distance buses, and airplanes. This notice required that "stay stations" be set up in the cities where transportation stations are located to provide a place where SARS patients or suspected cases found on the carriers can be accepted. To establish the "stay stations", the local government was to provide financial aid, technical support and the necessary equipment. Once a SARS patient (or suspected patient) was discovered on public transportation, the responsible head of the carrier was required to promptly contact the next closest "stay station" and arrange a drop-off for those patients to receive medical observation, quarantine, and treatment. All "stay stations" were obligated to accept these patients. The carrier was also to take measures necessary to enhance air circulation, and trace and record the identities of persons who have been in close contact with SARS patients. The notice also authorized the departments of transportation to persuade persons showing SARS symptoms not to use public transportation.¹⁵⁷ Some of these requirements were incorporated in article 38 of the *Regulations*.

156. This Part was adopted with permission from CHENGLIN LIU, *supra* note 14, § 4.2, at 85–87.

157. *Wu bu men tangzhi yan fang tongguo jiaotong gongju chuanbo feidian* [Ministry of Health et al., *Notice Regarding the Related Problems on the Strict Prevention of the Spread of SARS through the Use of Public Transportation*], Apr. 12, 2003, available at <http://www.chinanews.com.cn/n/2003-04-14/26/294190.html> (last visited Sept. 7, 2004), translated in CHENGLIN LIU, *supra* note 14, at 151.

The notice was jointly promulgated by the five ministries because SARS prevention on public transportation needed close and harmonious cooperation among various administrative jurisdictions. In implementing the notice, the transportation departments encountered enormous challenges from local authorities. The major concern of the local governments was that accepting SARS patients might set off the epidemic locally, which could defeat preventive efforts by the local governments. The following complaint illustrates the pressure that railroads placed on the local governments.

On May 8, 2003, the Railroad Ministry received a formal complaint from the government of Shanxi Province. The complaint dealt with difficulties that the localities faced in dealing with the people dropped off from trains. From April 24 to May 5, Datong Medical Institutions received twenty-five persons who either had a fever or had close contact with suspected SARS patients from the train station. According to the complaint, most of the passengers (who were often taken off the trains in the middle of their journey) did not believe they had SARS and were not at all cooperative with the epidemiological inspection procedure. Since none of the suspected patients were from Datong, it was difficult for the local government to accommodate these passengers. Finally, the twenty-five passengers were all released because the local hospitals concluded that they were all “healthy.” All of the passengers who were dropped off from one train managed to get onto another and go home.¹⁵⁸

VI. THE SARS LAWS ARE NEITHER ORIGINAL NOR A BREAKTHROUGH

The new SARS regulations clearly played a crucial role in controlling the epidemic in June of 2003. However, the ideas in the new regulations are not original. Both the *Regulations* and the *Measures* promulgated in May of 2003 bear a striking resemblance to the *Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases (PTID)*¹⁵⁹ and its implementing rules, *The Implementing Rules of the PTID*.¹⁶⁰ Thus, the new laws were not the breakthrough in Chinese health law that the government claimed.

158. Hu Yifeng et al., *Yinying Longzhao Tieluwang* [Railroad Transportation Under SARS Shadow], CAIJING MAGAZINE, May 25, 2003, available at <http://business.sohu.com/06/08/article209500806.shtml> (last visited Sept. 7, 2004).

159. The PTID consists of 41 articles in seven chapters: general provisions, prevention, epidemic reporting procedure, control, supervision, legal responsibilities, and supplementary provisions.

160. *The Implementing Rules of the PTID* (1991), translated in CHENGLIN LIU, *supra* note 14, at 161 [hereinafter *Implementing Rules*]. The *Implementing Rules*, which include seventy-three articles,

The NPC Standing Committee enacted the *PTID* in 1989 in response to a Hepatitis A epidemic that plagued Shanghai in 1988, during which approximately 30,000 people were infected.¹⁶¹ The purpose of the law was to prevent, control and eliminate the outbreak of infectious diseases in the future.¹⁶² The Ministry of Health promulgated *The Implementing Rules of the PTID* in 1991.

Even though the *PTID* and its implementing rules were legally effective during the SARS outbreak and remain in effect, the government and health officials for the most part ignored these laws. After April 20, 2003 the Central Government attempted to control SARS through legal means. One effort was to republish the *PTID* on April 26 in order to raise public awareness of this law.¹⁶³ It is noteworthy that the *PTID* had to be re-promulgated by the State Council in order to “activate” its binding force.¹⁶⁴ During the SARS outbreak, little reference was made to the *Implementing Rules of the PTID*.

Like any other law, the *PTID* and its implementing rules are not perfect. However, these laws anticipated a major public health emergency and provided operational guidelines for dealing with such an emergency. If the laws had been observed, the SARS epidemic would not have erupted as a national catastrophe.

A. The PTID Guiding Principles for Prevention and Treatment of Infectious Diseases

The principles of the *PTID* are to: (1) give top priority to prevention; (2) combine prevention with treatment; and (3) prevent and treat different diseases accordingly.¹⁶⁵ Based on these principles, the law requires health departments and hospitals to carry out their respective duties in preventing and controlling epidemic diseases.¹⁶⁶ To ensure that different types of diseases are dealt with according to their seriousness, the *PTID* classifies infectious diseases into three categories. Thirty-three diseases are classified in A, B, and C categories according to their seriousness and

further details the provisions in the *PTID*.

161. For a detailed report on the epidemic in 1988, see Xie Songxin, *City Fights Hepatitis A Epidemic*, CHINA DAILY, Jan. 26, 1988 (copy on file with author).

162. *PTID*, art. 1.

163. The *PTID* was republished in XINHUA NEWS on Apr. 26, 2003. CHENGLIN LIU, *supra* note 14, at 39.

164. CHENGLIN LIU, *supra* note 14, at 106.

165. *PTID*, ch. I, art. 2.

166. *Id.* ch. I, arts. 4, 6, 7.

pattern of infection.¹⁶⁷ For example, plague and cholera are the only listed Class A diseases, while AIDS/HIV is among many listed as a Class B disease. Only under special circumstances may the State Council add or remove a disease from the Class A category of infectious diseases,¹⁶⁸ while the Ministry of Health is authorized to make changes to the B and C categories.¹⁶⁹ SARS was officially added to the Class B diseases on April 10, 2003.¹⁷⁰

The “prevention first” principle was not seriously implemented before the SARS epidemic. Mr. Gao, the Executive Vice Minister of Health, admitted that a weak epidemic surveillance system was among the major causes of the SARS outbreak in 2003.¹⁷¹ Unqualified personnel staffed the institutions in charge of quarantine and inspection. These institutions were constantly underfunded and lacked functional equipment for monitoring and preventing epidemics. As a result, the epidemic surveillance network failed to pick up early signals of SARS transmission.¹⁷²

B. The PTID Preventive Measures

Among many other requirements, the *PTID* specifies that cities and city districts must designate hospitals for infectious disease treatment. In addition, infectious disease clinics and wards must be set up in regular hospitals to prevent the spread of infectious diseases.¹⁷³ Strict measures must also be taken to prevent iatrogenic infections and cross-infections within hospital and research institutes.¹⁷⁴ Sewage and human waste contaminated by infectious diseases must be disinfected and properly disposed.¹⁷⁵ Bacterial and viral strains must be properly transported and stored.¹⁷⁶ At the onset of the SARS epidemic, none of these requirements

167. *Id.* ch. I, art. 3.

168. *Id.*

169. *Id.*

170. See *Weishengbu fuzeren biaoshi “feidian” naru chuanran bing fanzhi fa guanli* [A Ministry of Health Official Announced SARS was Officially Added to the List of Infectious Diseases in the *PTID*], CHINA YOUTH DAILY, Apr. 11, 2003, at <http://news.sohu.com/53/84/news208368453.shtml> (last visited Sept. 8, 2004).

171. GAO QIANG, GUANYU JIANLI JIANQUAN TUFU GONGGONG WEISHENG SHIJIAN YINGJI JIZHI GONGZUO QINGKUANG DE BAOGAO [WORK REPORT ON THE IMPROVEMENT OF THE MECHANISM DEALING WITH PUBLIC HEALTH EMERGENCIES], ZHONGGUO RENDA XINWEN [CHINA PEOPLE’S CONGRESS NEWS], Apr. 12, 2004, at <http://www.peopledaily.cn/GB/14576/28320/32776/32780/2443144.html> (last visited Sept. 8, 2004).

172. See *id.*

173. *PTID*, *supra* note 105, ch. II, art. 11.

174. *Id.* art. 20.

175. *Id.* art. 17.

176. *Id.* art. 16.

had been implemented. On the contrary, the Administrative Health Department required that SARS patients be treated at the hospitals where they were admitted. This so-called “absorb” method resulted in serious cross-infection, which turned hospitals into a source of infection. The “absorb” method was a blunt violation of the *PTID* because it did nothing to prevent the spread of the disease and, in fact, encouraged it. Unfortunately, no officials took legal responsibility under the *PTID*.

C. The *PTID* Information Reporting System

The *PTID* requires anyone discovering an infectious disease patient (or one suspected of having an infectious disease) to report the case to the nearest health department.¹⁷⁷ Health care workers who discover the diseases specified in the *PTID*, must make a report to the relevant departments.¹⁷⁸ It is illegal to conceal, withhold, or make false reports regarding an epidemic, or to direct others to do so.¹⁷⁹ After receiving information regarding an epidemic, the Health Department of the State Council must release it to the public.¹⁸⁰ The law provides that the Ministry of Health may also authorize a provincial government to release the information to the public within their respective territories.¹⁸¹

Furthermore, the *Implementing Rules of the PTID* set forth detailed requirements for reporting information about an epidemic. If a case of a Class A disease is discovered, the relevant health workers must report the case to the local health department within six hours in urban areas, or within twelve hours if in rural areas.¹⁸² If a case of a Class B disease is discovered, the case must be reported to the local health department within twelve hours in urban areas, or within twenty-four hours if rural areas.¹⁸³ The local health department receiving the report must report the case to the higher health department and the local government at the same time.¹⁸⁴ After receiving the report of the occurrence of a Class A disease, the health department at the provincial level must report the case to the Ministry of Health within six hours.¹⁸⁵ The epidemic reporting system

177. *PTID*, *supra* note 105, ch. III, art. 21.

178. *Id.*

179. *Id.* art. 22.

180. *Id.* art. 23.

181. *Id.*

182. *Implementing Rules*, *supra* note 160, ch. II, art. 35.

183. *Id.*

184. *Id.* ch. III, art. 36.

185. *Id.*

defined by the *PTID* and its implementing rules were sound and operational. However, the Chinese government ignored these mandates during the SARS outbreak. The epidemic reporting system established in the new laws closely resembles that in the *PTID* and its implementing rules.

On at least two occasions, health officials cited the *PTID* as an excuse for withholding SARS information,¹⁸⁶ claiming that SARS was not on the list of infectious diseases in the *PTID*. This strict reading of the *PTID* led them to conclude, incorrectly, that it was not necessary to release the information to the public.¹⁸⁷ While the *PTID* does not authorize the local government to add a new disease to the list, the *Implementing Rules of the PTID* require local health departments to promptly report a previously unknown infectious disease to the local government and to take necessary measures to control the disease.¹⁸⁸ After receiving the report about the outbreak of SARS, a previously unknown disease, the local government of Guangdong should have immediately reported this to the Ministry of Health and announced the information to the public with the Ministry of Health's authorization.¹⁸⁹ Therefore, there was no legitimate ground for the government to conceal the vital information that an epidemic was occurring.

D. The PTID Epidemic Control Measures

According to the *PTID*, if a hospital or any other health care institution has discovered any specified infectious disease, it must take necessary measures to quarantine and treat the patients.¹⁹⁰ Patients are required to cooperate with the quarantine measures.¹⁹¹ The local government is authorized to restrict or suspend trade fairs, school classes, and other large gatherings.¹⁹² If necessary, authorities may also close water resources.¹⁹³

186. See *Ten Questions*, *supra* note 64 (Guangdong Health Officials cited the *PTID*); *Weishengbu gongbu zhongguo feidianxing feiyan fangzhi qingkuang bing da jizhe wen* [The Ministry of Health Announced SARS Information and Answered Reporters' Questions], Apr. 3, 2003, at <http://www.cctv.com/news/china/20030403/100966.shtml> (last visited Sept. 8, 2004).

187. See *PTID*, *supra* note 105, ch. III.

188. *Implementing Rules*, *supra* note 160, ch. IV, art. 51.

189. See *PTID*, *supra* note 105, ch. III, art. 23.

190. *Id.* ch. IV.

191. *Id.* art. 24.

192. *Id.* art. 25.

193. *Id.*

In the event of an outbreak of Class A or B diseases, the local government may seal off the affected area and declare it an epidemic zone.¹⁹⁴

None of the above measures were carried out when the first clusters of SARS cases were identified in Guangdong. The spread of SARS to Hong Kong and Beijing could have been prevented if the local government had taken actions to control traffic between Guangdong and other cities in accordance with the *PTID*.

Overall, the 2003 laws on SARS follow the structure of the *PTID*. While some improvements and variations were made, a considerable number of provisions of the new laws merely reiterated what the *PTID* and its implementing rules already mandated. Despite their shortcomings, the *PTID* and its implementing rules were well structured and carefully thought out. The laws were enacted in 1989 to prevent future public health emergencies. Unfortunately, these laws were set aside when another epidemic broke out, fourteen years later, in 2003.

E. The Latest Amendment to the PTID

On August 28, 2004, the eleventh session of the Tenth NPC passed sweeping amendments to the *PTID*.¹⁹⁵ The revised version nearly doubled its provisions, growing in number from forty-one to eighty articles. Two new chapters were added that incorporated lessons learned from dealing with the SARS epidemic in 2003. The revised version of the *PTID* retained “prevention-first” as the guiding principle in dealing with infectious diseases.¹⁹⁶ The following part highlights some of the significant changes made in the amended *PTID*.

First, the new amendments adjust the disease classifications of the *PTID*. SARS, Avian Flu and tuberculosis are now included as Class B diseases,¹⁹⁷ and the new law authorizes the State Council to add previously unknown diseases to the list if the new diseases require preventive measures comparable to those of Class A or Class B diseases.¹⁹⁸ In fact, this article is a modified version of article 51 of the *PTID Implementing Rules*. It is hoped that this change will close the loophole used by various

194. *Id.* art. 26

195. Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases (2004), at http://news.xinhuanet.com/zhengfu/2004-08/30/content_1924490.htm (last visited Oct. 19, 2004) [hereinafter *PTID* (revised)]. There is currently no English translation available.

196. *PTID* (revised), art. 2.

197. *PTID* (revised), art. 3.

198. *PTID* (revised), art. 4.

high officials who had cited the old *PTID* as an excuse for not taking prompt action to control SARS.¹⁹⁹

Second, the new law revamps the epidemic reporting system.²⁰⁰ In addition to reiterating the vertical reporting schemes, the new law stresses the importance of releasing information horizontally to neighboring regions.²⁰¹ The new law also requires the government to announce epidemic situations periodically.²⁰² Unlike SARS regulations, however, the new law does not prescribe a fixed time frame for reporting, releasing, and announcing information about an outbreak.²⁰³

Third, the new law emphasizes the government's role in coping with future epidemics. The law requires that infectious disease prevention be a part of the government's social and economic development plan.²⁰⁴ The purpose of adding this article is to show that epidemic prevention is an integral and permanent part of the government's regular responsibilities. Under the new law, the various levels of government are required to establish and maintain a functional epidemic surveillance system and routinely evaluate the epidemic situation in their respective regions.²⁰⁵ The central government is required to provide financial assistance to inner regions where the economy lags far behind, and provide adequate training to the medical personnel there to increase the capability of those regions to handle sudden epidemics.²⁰⁶ The law also requires hospitals to accept infectious disease patients and provide free treatment to those who can not afford their medical expenses.²⁰⁷

Fourth, the new law strikes a balance between the protection of the rights of individuals and the public interest. To protect patients' privacy, the new law prohibits hospitals from releasing patients' medical records.²⁰⁸ Any violation of this provision can result in administrative sanction or possible criminal liability.²⁰⁹ In order to increase cooperation from patients, the new law requires that patients be continuously paid by their employers during quarantine or isolation.²¹⁰ On the other hand, the new

199. See *supra* notes 186–90 and accompanying text.

200. *PTID* (revised), arts. 30–38.

201. *PTID* (revised), art. 35(2).

202. *PTID* (revised), art. 38.

203. Cf. *Regulations*, *supra* note 101, ch. 3; see *supra* notes 117–20 and accompanying text.

204. *PTID* (revised), art. 59.

205. *PTID* (revised), art. 60.

206. *Id.*

207. *PTID* (revised), art. 52.

208. *PTID* (revised), art. 12.

209. *PTID* (revised), art. 68(5).

210. *PTID* (revised), art. 41(2).

law provides stricter rules on quarantine and isolation. For example, under the previous law, suspected carriers of Class A diseases were only subject to epidemiological observation at appointed facilities.²¹¹ The new law provides that suspect patients be placed in isolation, which is more restrictive.²¹²

VII. CONCLUSION

In assessing the battle against SARS in China, it is fair to ask the following questions. First, could SARS have been better contained? Second, could the epidemic have been worse? Third, how will the government react to future public health crises?

SARS could have been better contained. The *PTID* and its implementing rules clearly laid out procedures sufficient to handle an epidemic. However, because the government failed to follow the preventive measures they prescribed, SARS erupted as a national disaster. Local governments failed to release accurate information to the public and to the authorities in neighboring regions. When SARS cases spread to Beijing, the *PTID* was again ignored and the results were devastating. Senior health officials violated the law by covering up SARS information and misleading the public. The health department gave hospitals incorrect instructions about how to handle the disease, turning hospitals into SARS spreaders. Had the local and national governments followed the measures in place, the spread of SARS could have been dramatically reduced. Had Beijing taken prompt actions as required by the *PTID*, the cross-infection rate would have been significantly reduced and more lives would have been spared.

On the other hand, the epidemic would have been much worse if the government had continued its “black-box” approach. After the National Campaign against SARS was officially launched, the government began to enforce the *PTID* and took effective measures to combat the disease. The “black-box” approach to national emergencies was replaced with an open, honest, and transparent approach. In May of 2003, the government enacted two major laws that provided specific guidelines for SARS prevention and treatment. The government’s ideological shift, combined with legally supported efforts, proved to be a tremendous success and SARS was effectively brought under control at the end of June 2003.

211. *PTID*, art. 24(3).

212. *PTID* (revised), art. 39(2).

SARS will likely return.²¹³ The disease is extremely destructive, though it is not the only disease that poses a constant threat to China's weak health care system. SARS has increased public awareness of how destructive fatal diseases can be. In June of 2004, the government openly admitted that around 840,000 people are HIV-positive in China.²¹⁴ In addition, an estimated 843,000 people are infected with Schistosomiasis, a disease supposedly controlled decades ago.²¹⁵ Other diseases, such as tuberculosis, pose just as serious of a health risk as SARS. It will be an arduous task for the government to keep a close check on all these infectious diseases.

The most effective means of combating infectious diseases, especially those without sure cures or vaccines, is to control the disease in the first place. Consequently, the government should give top priority to prevention, including providing rapid means of response, timely information disclosure and adequate training of medical personnel. The recent sweeping changes to the *PTID* reiterate the "prevention first" principle and demonstrate the government's determination to incorporate infectious disease control into its primary agenda. However, the effectiveness of the new *PTID* remains to be seen.

Local officials are not accountable to their constituencies because they are appointed by higher-level government officials. Therefore, the fundamental criteria for reappointment or promotion is how well one can implement orders from a higher level, not how well one serves the local community. In recent years, local gross domestic product (GDP) was the foremost standard set by the Central Government for assessing local officials.²¹⁶ Accordingly, local governments' sole emphasis was economic growth. Public health was ignored, largely because it appeared to put a drain on the local economy.

213. See U.S. Centers for Disease Control and Prevention Conference Transcript, *Severe Acute Respiratory Syndrome Preparation* (Sept. 26, 2003), at <http://www.cdc.gov/od/oc/media/transcripts/t030926.htm> (last visited Sept. 23, 2004). "[A]s an infectious disease expert, . . . I've never seen a pathogen emerge and go away on its own," said Dr. Julie Gerberding, director of the U.S. Centers for Disease Control and Prevention in Atlanta. [W]e have to expect that somewhere, some time, this corona virus is going to rear its ugly head again and that's the whole purpose of all this preparedness effort." *Id.*

214. Zhou He, *Woguo aizibing bingren yue 8 wan li, bingdu ganran zhe yue 84 wan ren* [China has 80,000 AIDS Patients and 840,000 People Tested HIV-Positive], PEOPLE NET, June 29, 2003, at <http://www.people.com.cn/GB/shizheng/1027/2605049.html> (last visited Sept. 5, 2004).

215. *Woguo you xuexichongbing bingren 84.3 wan* [China has 843,000 People Infected with Schistosomiasis], XINHUA WANG, June 29, 2004, at <http://www.china.com.cn/chinese/kuaixun/598212.htm> (last visited Sept. 8, 2004).

216. DANIEL C.K. CHOW, *THE LEGAL SYSTEM OF THE REPUBLIC OF CHINA* 439 (2003).

When SARS first broke out, local governments reacted by assessing how the disease would affect the image of the local region and hurt the local economy. During an important news conference, Guangdong health officials stated that 305 SARS cases were “not too many.”²¹⁷ As a result, local governments did not consider it necessary to release valuable information to the public. The value that local government placed on health and welfare was less than that placed on local image and economic growth. If the main focus for appointment and promotion to public office remains the same, the prevention-first principle will once again fall by the wayside.

Even though the new draft law has been hailed as a breakthrough in disease prevention, it remains to be seen whether the law will be effectively implemented. To comply with the new law, the governments at both the central and local levels will have to invest substantial financial and human resources to set up a framework for infectious disease prevention and treatment. This also means that epidemic prevention will be a continuing effort, even when no epidemic outbreak seems imminent. The government must set aside a considerable part of state revenue to establish and maintain a national epidemic prevention system, revenue that would otherwise be used to pursue greater economic growth. Unless government officials have the political will to sacrifice economic growth for social welfare, the new *PTID* measures will have no greater effect than those of the original *PTID*.

217. See *supra* note 66 and accompanying text.